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Disbursement Schedule No. 57—Continued

	Fiscal year		Total
	1919	1921	
Administrative expenses, Seminole National Government			$53,749.96
Per capita payments	$2,100.00	$200.04	17,500.04
Total	2,100.00	200.04	71,250.00

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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 172.

THE UNITED STATES, PETITIONER,

VS.

THE SEMINOLE NATION, RESPONDENT.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI.

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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 172.

THE UNITED STATES, PETITIONER,

VS.

THE SEMINOLE NATION, RESPONDENT.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI.

Before answering the questions presented by petitioner, the respondent will first present a question of the court's jurisdiction to consider this petition.

JURISDICTIONAL QUESTION.

The respondent opposes the petition for writ of certiorari on the ground that it was filed too late, and therefore this court is now without jurisdiction to consider the petition.

The record of the proceedings below shows that the judgment of the Court of Claims was rendered on December 2nd, 1935 (Rec. 29). The defendant below filed a motion for a new trial on February 8, 1936 (Rec. 30). This motion was overruled on March 2, 1936 (Rec. 30), and the time for filing the petition for writ of certiorari began to run from this date.

A period of three months is allowed in which to make application for writ of certiorari. Section 8 (a) of the Act of February 13, 1925, c. 229, 43 Stat. 936, 940 (U. S. C., Title 28, Sec. 350), provides in part as follows:

> "No writ of error, appeal, or writ of certiorari, intended to bring any judgment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree * * *"

Under this statute the time for filing the petition expired on June 2nd, 1936. The petitioner failed to make its application to this court within the time allowed by the above statute. This court has held that failure to file the petition until after the expiration of the three months' period deprives the court of jurisdiction to consider the petition. *Rust Land & Lumber Co.* v. *Jackson*, 250 U. S. 71, 76; *United States* v. *Lippmann, Spier & Hahn*, 260 U. S. 739; *Hooper* v. *United States*, 274 U. S. 743.

Petitioner evidently relies upon the further proceedings in the court below, as a basis for its action in pre-

senting the petition for writ of certiorari at this late date. In its statement of jurisdiction (Pet. 1) petitioner reviews the proceedings in the court below as follows:

> "The judgment of the Court of Claims was entered December 2, 1935. A motion for a new trial was made February 6, 1936, and was denied March 2, 1936. A second motion for a new trial was filed, with leave of the Court of Claims, on May 13, 1936, was orally argued June 1, 1936, and was denied June 8, 1936. * * *"

After the first motion for a new trial was overruled by the court below this case was sent to the solicitor-general's office with a view of making application for a writ of certiorari to this court. However, in lieu of filing its petition within the 90-day period, ending on June 2, 1936, petitioner, defendant below, on May 13, 1936, filed in the court below a motion for leave to file a motion for a new trial under Section 1088, Revised Statutes, Judicial Code, Section 175 (U. S. C., Title 28, Sec. 282). This motion reads as follows (Rec. 30):

> "Comes now the defendant, by its assistant attorney-general, and pursuant to R. S., Sec. 1088, Judicial Code, Sec. 175, U. S. C., Title 28, Sec. 282, respectfully prays leave to file the attached motion for a new trial in this case."

Let us impress upon the court that the only leave asked for and granted by the Court of Claims to petitioner was that it file a motion for a new trial under said Section 1088, Revised Statutes.

The lower court allowed this motion on May 18th, 1936, and the motion for a new trial under said Section 1088 was filed on May 18th, 1936 (Rec. 30). This motion, though designated as a second motion for a new trial, was in fact a first motion for new trial under Section 1088, Revised Statutes. After oral argument, in which the solicitor-general's office was represented by Mr. Charles E. Wyzanski, Jr., this motion was overruled by the court on June 8th, 1936 (Rec. 30).

The petitioner's right to file this petition either stands or falls on the effect of the filing of its motion for a new trial under said Section 1088. This section provides as follows:

> "The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion, on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States, but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law." (R. S., Sec. 1088; Mar. 3, 1911, c. 231, Sec. 175, 36 Stat. 1141, U. S. Code, Title 28, Sec. 282.)

In commenting upon the nature of motions filed under said Section 1088, in *The Electric Boat Co.* v. *United States,* 55 C. Cls. 497, 498, the court states as follows:

"* * * Nor is the motion for a new trial under the rules of the court the same as a motion under Section 175, Judicial Code.

* * * * * * *

"The motion contemplated by Section 175, Judicial Code, is largely analogous to a bill in the nature of a bill of review in equity to set aside a former decree, or a bill impeaching a decree for fraud. *Ex parte Russell*, 13 Wall. 664, 669. * * *"

In discussing the effect of the filing of a motion for a new trial under said Section 1088, Hughes Federal Practice, Par. 5193 (p. 464), states:

"While granting a new trial in the court of claims deprived the Supreme Court of jurisdiction on appeal, the mere making of a motion therefor did not deprive that court of jurisdiction to consider the appeal." *United States* v. *Ayres*, 9 Wall. 608, 19 L. Ed. 625; *Ex parte Russell*, 13 Wall. 664, 20 L. Ed. 632; *Ex parte United States*, 16 Wall. 699, 21 L. Ed. 507.

Therefore, the mere filing of a motion for a new trial under said Section 1088 would not interfere with the regular judicial procedure in a case.

It is well settled that no appeal lies from the decision of the Court of Claims on a motion filed under said Section 1088. In the case of *Young* v. *United States*, 95 U. S. 641, 643, this court stated:

"* * * We are all of the opinion that the decision of the Court of Claims, upon a motion by the United States, within the prescribed jurisdiction, is conclusive, and not subject to review. The claimant must rely upon his appeal from the final judgment upon the merits for protection against wrong under this form of proceeding."

The proceedings after judgment in the case of *Pocono Pines Assembly Hotels Co.* v. *United States*, 73 C. Cls. 447, are similar in many respects to the case at bar. In that decision (p. 463) the Court of Claims, after reviewing the decisions of that court under said Section 1088, states as follows:

> "* * * Our determination in this respect is final under the law; no appeal may be predicated thereon. *Young* v. *United States*, 95 U. S. 641.
>
> "The government, however, possessed the right under Section 3 of the Act of February 13, 1925 (43 Stat. 939), to petition the Supreme Court for a writ of certiorari to review our decision, and Section 8 (a) of the act allowed ninety days in which to do so. The government did not file a petition for a review, and hence the judgment of this court became final at the expiration of the ninety-day period."

In the case at bar the petitioner did not file its petition for writ of certiorari on or before June 2, 1936, the date upon which the ninety days allowed by statute expired, but elected to file a motion for a new trial in the lower court under Section 1088, Revised Statutes, which was overruled by the court. As the time for applying for certiorari has expired, and there being no appeal from the decision of the lower court on said motion under Section 1088, Revised Statutes, it is respectfully submitted that this court is now without jurisdiction to consider the petition.

STATEMENT OF CASE.

We will briefly outline the issue in this case for the court.

The special jurisdictional Act of May 20, 1924, c. 162, 43 Stat. 133, 134, authorizes the Court of Claims to adjudicate:

> "any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Seminole Indian Nation or Tribe, or arising under or growing out of any Act of Congress in relation to Indian Affairs."

The cause of action was the illegal disbursement by the Secretary of the Interior of respondent's funds arising under its treaties and agreements, and the illegal disbursement of respondent's funds made in violation of various acts of Congress governing their disbursement.

The nature of this case is concisely stated in the opinion of the court below as follows (Rec. 16):

> "* * * The claim is one of accounting, except as to one item, and in the main is similar to the claim presented in *The Creek Nation* v. *United States,* 78 C. Cls. 474.
>
> * * * * * * *
>
> "The plaintiff's claim in the aggregate amounts to $1,746,013.23, and consists of items falling generally within two classes:
>
> 1. Items as to which it is alleged that the United States failed to make payments in the amounts and in the manner provided by its treaties and agreements with the Seminole Nation.

2. Items as to which it is alleged payments were made by the Secretary of the Interior out of Seminole trust funds without authority of law."

THE PRINCIPLES OF LAW APPLIED BY LOWER COURT.

The law governing items of the claim under Class 1 above stated is set out by the court as follows (Rec. 23):

> "In determining the plaintiff's right to recover as to these items, we have applied the rule that an Indian tribe is entitled to have the full amount due it under the terms of a treaty with the United States disbursed in the manner and for the precise purposes named in the treaty, unless Congress by subsequent legislation provides that payments be otherwise made, and that the United States is liable to the tribe for the balance of any moneys not so disbursed and expended."

The law governing items of the claim under Class 2 above stated is set out by the court as follows (Rec. 23):

> "We now come to the consideration of the items of the claim where it is alleged disbursements of Seminole trust funds were made by the Secretary of the Interior without authority of law. In the consideration of these items the rule stated in *The Creek Nation* v. *United States, supra,* will be applied:
>
> 'That Congress has plenary power over the administration of Indian affairs is well settled. *Cherokee Nation* v. *Georgia,* 5 Pet. 1; *Cherokee Nation* v. *Hitchcock,* 187 U. S. 294; *Lone Wolf* v. *Hitchcock,* 187 U. S. 553. The Secretary of the Interior has only such authority over the funds of Indian tribes as is confided in him by Congress. He cannot legally disburse and pay out Indian funds for purposes other than those authorized by law. This rule is the test

by which the legal right of the Secretary of the Interior to make the disbursements involved must be determined.' "

The above principles of law cover this whole case, and are applied to all items of the claim.

REPLY TO PETITIONER'S QUESTIONS.

On page two of its petition, petitioner gives the "questions presented." We will answer these in the order given.

Petitioner's First Question.

"1. Whether the claims adjudicated by the Court of Claims were presented to it for decision in the time within which the United States had consented to be sued."

The reason for this contention is stated as follows:

"1. Departing from the usual and accepted course of judicial proceedings, the lower court erroneously allowed the Seminoles, after the time for bringing suit had expired, to amend their petition to present for adjudication causes of action not included in their original petition" (Pet. 15).

Petitioner then argues that the lower court erred (1) in granting recovery for illegal disbursements of treaty funds before July 1, 1898, because the original petition sought recovery only for illegal disbursements after this date, and (2) that recovery for illegal disbursements of the income of certain trust funds only was sought therein.

To uphold the first contention of petitioner Paragraphs II and VII (Rec. 1, 2) of the original petition would have to be disregarded altogether. The general allegations in these paragraphs, coupled with those in Paragraph VIII, show clearly that plaintiff sought recovery for illegal disbursements under treaties and agreements before July 1, 1898, which is the first period covered by the claim. Paragraph II alleges "That at all times mentioned herein, and for many years prior thereto," plaintiff was owner of large trust funds, held in trust by defendant for the use and benefit of plaintiff, and that there existed various treaties and agreements between plaintiff and defendant whereby said trust funds were to be managed and invested by defendant, and the interest thereon paid over to the national treasurer of plaintiff.

The use of the word "treaties" shows that our claim antedates July 1, 1898, for no more treaties could be made with an Indian tribe after the passage of the Act of March 3, 1871, c. 120, 16 Stat. 544, 566 (Rev. Stat., Sec. 2079). The use of this term clearly shows that our claim antedates the year 1871, and is so all-inclusive that it would embody any treaty between the plaintiff and the United States prior to the passage of this act. After the Act of March 3, 1871, agreements only could be made with an Indian tribe. We used the term "agreements," signifying that the claim includes any agreements made after the Act of March 3, 1871.

Paragraph VII states as follows:

> "That at all times mentioned herein a certain act of Congress, now known as Section 2097, Revised

Statutes of the United States, was in full force and effect. That said section is as follows:

'No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purposes, unless expressly authorized by law' '' (Rec. 2).

Section 2097, Revised Statutes, was in full force and effect since its passage on July 26, 1866, c. 266, 14 Stat. 255, 280, and applies up to the time of the Curtis Act, when a new order of affairs was established. This allegation shows clearly that our claim for illegal disbursements antedates July 1, 1898.

All moneys claimed before July 1, 1898, had been appropriated by Congress in fulfillment of treaties and agreements with plaintiff (Rec. 11-13), but were not disbursed by defendant below in the manner so provided in said treaties and agreements. Therefore, these illegal disbursements were also made in violation of said Section 2097, and the allegation in Paragraph VII would cover most of the items of illegal disbursement before July 1, 1898, upon which recovery was had in the amended petition.*

The second contention is equally without merit. That petitioner is guardian of respondent, the Seminole Nation, is well settled, and any moneys due under treaties and agreements which were to have been disbursed by petitioner for the benefit of respondent would be trust

*Section 2097 is referred to by the lower court in its opinion with reference to Item 3 (Rec. 20).

funds in the general sense, and the general allegations of the original petition show that trust funds were not used in the narrow sense as suggested by petitioner, but in the general sense. Then, too, the broad language of Section 2097, above quoted, shows that this provision applies to all treaty funds, whether trust funds in a narrow sense, or general treaty funds.

The second period of our claim begins with the Curtis Act, for under this act the United States assumed full administrative control of the affairs of plaintiff tribe. Paragraphs III to VI, inclusive, of the original petition allege violations of the terms of treaties and agreements, and other acts of Congress, beginning with July 1, 1898, as the result of which defendant illegally spent plaintiff's funds. Violations of Section 19 of the Curtis Act, and the illegal disbursement of the principal of the permanent Seminole school fund come within this period.

Paragraph VI of the original petition states:

> "That from July 1st, 1898, until the present time, defendant, in violation of its duty as trustee of the funds of plaintiff, in violation of the rights of plaintiff under its various treaties and agreements with defendant, and without authority of Congress, has spent large sums of the trust funds of plaintiff" (Rec. 2).

Certain allegations are pointed out by petitioner to show an inconsistency between the original petition and the amended petition in the claim for illegal disbursements under Section 19 of the Curtis Act (Pet. 18, 19). No claim for the $1,500,000.00 trust fund income before July 1, 1898, was presented in the original petition, but

this income was a part of the claim *after* July 1, 1898, for illegal disbursements in violation of Section 19 of the Curtis Act. This item has no connection with Paragraph II of the original petition, notwithstanding petitioner's suggestion to the contrary (Pet. 18), but comes within the second period of our claim, which is covered by Paragraphs III to VI, inclusive, of the original petition.

The allegation in Paragraph II of the original petition alluding to payments of interest to plaintiff's national treasurer, and the allegation in Paragraph III that after the Curtis Act defendant refused to further make payments to plaintiff's national treasurer, have no relation to each other, as petitioner would lead the court to believe. These allegations were incidental to the claim, and were merely descriptive of the two separate periods or "eras" of the claim—before and after the Curtis Act (Rec. 23, 24). No claim was made for moneys *lawfully* turned over to plaintiff's treasurer before the Curtis Act, and no claim was made for moneys which defendant *refused* to turn over to plaintiff's treasurer after the Curtis Act. The claim under Section 19 was for illegal disbursements to the tribal officers in violation of said Section 19, which were made after July 1, 1898, "without authority of Congress," as alleged in Paragraph VI of the original petition. Therefore, the above allegations, being incidental to the main cause of action, furnish no basis for petitioner's contention that the claim for illegal disbursements under Section 19, set forth in the amended petition, is foreign to the general claim for said illegal disbursements in Paragraphs III to VI of the original petition.

The petitioner's contention is not so much a question of the court's jurisdiction, as it is a question of pleading, for the original petition was filed within the time allowed by the jurisdictional act as amended (Rec. 10). The contention, in effect, is that in a case wherein a fiduciary relationship exists between the parties and the facts are within the sole knowledge of defendant, the law requires precise allegations and will not permit general allegations in a petition for accounting. We do not believe that this contention can be sustained.

The original petition was, of necessity, couched in general terms, for it requested an accounting of defendant of disbursements under treaties and agreements, and for the period beginning with the Curtis Act. When this petition was filed the law was unsettled—a similar case in principle had not been decided (*The Creek Nation* v. *United States*, 78 C. Cls. 474)—and the details of the items of illegal disbursement were within the records and files of defendant. Paragraph VIII of the petition alleges:

> "That the defendant has thus spent, in violation of law, a large amount of the trust funds of plaintiff. That the exact amount of such expenditure will be shown by the books and records of defendant, and that such knowledge is in the possession of defendant, and not of plaintiff.
>
> "Wherefore, plaintiff prays that defendant be required to file in this cause a statement showing its expenditures of plaintiff's funds during said period, the purposes for and dates when such expenditures were made, and the authority of law, if any, which authorized defendant to make such expenditures; that, if necessary thereafter, plaintiff be permitted to amend this petition, and that plaintiff have judg-

ment against the defendant in such sum or sums as appear to this court to be expended without authority of law, with interest at six per centum per annum from the date of the expenditure of the several items constituting said sum" (Rec. 2, 3).

Therefore, in the light of the knowledge plaintiff then had, a skeleton petition was filed under Rule 12 of the court below then in force (Rule 14, Revised Rules), which reads as follows:

> "12. When the plaintiff cannot state his case with the requisite particularity without an examination of papers in one of the executive departments and has been unable to obtain a sufficient examination of such papers on application he may file a petition stating his claims, as far as is in his power, and specifying, as definitely as he can, the papers he requires, and thereafter may file a motion for a call upon the proper department for such information or papers as may be deemed necessary, and when the same are furnished the petition may be amended and take the place of the original petition."

It is apparent to the court that the general accounting requested was the essence of the petition. As was said in *Green* v. *Brooks*, 22 P. 849, 851:

> "The very object of an accounting may be, and frequently is, to ascertain how much has been realized and expended, so as to determine whether the *cestui que* trust is entitled to payment."

The rules of pleading are liberal in cases wherein a fiduciary relationship exists, and it is well settled that in a petition for a general accounting:

> "When existence of the fiduciary relationship and receipt of property thereunder by defendant are

> alleged, and nothing is stated barring the right of relief, the complaint is sufficient'' 65 C. J. 902.

And again:

> "Where matters essential to the determination of claims by complainant in a bill for an accounting are charged to rest in the knowledge of defendant, or must of necessity be within his knowledge, and are consequently the subject of a part of the discovery sought by the bill, precise allegations thereof are not required." 1 C. J. 635; *State* v. *Ill. Cent. R. Co.*, 246 Ill. 188, 92 N. E. 814, 835.

Nor under the rules of pleading is it necessary to plead the particular recovery the court awards. In the case of *Electric Boat Co.* v. *United States*, 66 C. Cls. 333, 377, in commenting upon the rules of pleading in the Court of Claims, Mr. Chief Justice Booth states:

> "* * * The judgment awarded is not the judgment sought in the petition, plaintiff contending for the amount of increases plus a reasonable profit. The court, however, is authorized under our forms of pleading to award a judgment in accord with the facts stated and proven, notwithstanding the absence of a count in the pleadings for the particular recovery. *Wood et al.* v. *United States*, 49 C. Cls. 119; *Clark* v. *United States*, 95 U. S. 539."

It is significant also to notice that this contention of petitioner was made for the first time in the court below when it became the substance of defendant's motion for a new trial under Section 1088, Revised Statutes, filed May 18, 1936 (Rec. 30). The original petition was filed on February 24, 1930 (Rec. 1). Defendant filed no demurrer to this petition, but filed a general traverse (Rec. 3). Defendant had four years in which to raise

any objection to the original petition, but did not do so. After these many years, and at this late stage of the proceedings, petitioner now raises the question as to whether or not the general allegations of the original petition support the items of the claim specifically set forth in the amended petition.

Even if the original petition had imperfectly stated the cause of action, it is well settled that:

> "If a complaint not demurred to, sets out a cause of action, however imperfectly, it will withstand objection first made after judgment." *Vicksburg S. & P. Ry. Co.* v. *Anderson Tully Co.*, 261 Fed. 741, 744, 745, affirmed 256 U. S. 408.

Viewing the original petition in the light of the above-quoted decisions, it is respectfully submitted that the general allegations are entirely sufficient to sustain the specific items of the claim as set forth in the amended petition, and upon which judgment was rendered; and that it is now too late for petitioner to complain about the allegations of the original petition.

Development of Original Cause of Action.

The petitioner states that the amended petition was filed four years after the jurisdiction of the Court of Claims had lapsed (Pet. 16). This delay cannot be attributed to plaintiff below, for defendant's officers took four years in which to prepare and file the accounting requested in the original petition. This accounting was filed in the court below on September 9, 1934; it sets forth specifically all disbursements made under every

treaty and agreement, and act of Congress, dealing with plaintiff's funds, and furnished the basis upon which this case was tried (Rec. 16). It is evident to the court that no progress could be made in the trial of the case until this report was submitted by defendant.

After an examination of this accounting report, plaintiff below prepared and filed the amended petition, with leave of court (Rec. 3). Defendant made no objection to this petition when it was filed, and filed no demurrer to it (Rec. 8). As the lower court states: "The jurisdiction of the court to hear and determine the issues presented in the amended petition, filed on September 19, 1934, is not questioned by the defendant" (Rec. 16). Accordingly, on June 4, 1935, the case was submitted to the court on the amended petition (Rec. 8).

In the amended petition the original cause of action —the illegal disbursement of plaintiff's funds before and after the Curtis Act—remains the same. This petition merely particularizes the items of the general claim in the original petition. Thus in amending our petition we narrowed the broad allegations of the original petition to the specific items of illegal disbursement set forth in the amended petition. In other words, we have merely pleaded the facts concerning our original claim, as developed from the evidence submitted by defendant and prayed for in the original petition.

We believe that what has been done is covered by the rule as stated in *Buck* v. *United States,* 25 C. Cls. 120, 122, wherein the amendment occurred after the statutory period had run. The court said:

"The original petition embraced, by general allegation, the kind and quality of services contained in the amended petition, and the amended petition in addition contained a charge of $6.00 rendered in 1886, after the passage of the Act of August 4, 1886. Amendments are largely in the discretion of the court, and are always proper as against the statute of limitations, when no new cause of action is introduced and the amendment is confined to a mere development of the original cause of action (*Cape Ann Granite Company* v. *The United States*, 20 C. Cls. R. 1)."

The rules of pleading in the Court of Claims are liberal. In *The Fed. Mfg. & Printing Co.* v. *United States*, 44 C. Cls. 318, 321, 322, this court said:

"Section 954 of the Revised Statutes provides that any court of the United States may at any time permit either of the parties to amend any defect in the process or pleadings upon such conditions as it shall, in its discretion and by its rules, prescribe. This statute is in accord with the spirit of modern jurisprudence. The discretion of the courts ought to be exercised with great liberality in the allowance of amendments and will be in furtherance of justice so far as this court is concerned, except when the failure to observe the restraining rules of the common law will operate to unjustly prejudice the substantial right of the other party to the proceeding, and except in those cases where the amendment seems superfluous."

The lower court in the use of its discretion permitted the amended petition to be filed in this case, under its rules and without objection by defendant below, and it therefore took the place of the original petition.

It is well settled that the allowance of amendments is within the discretion of the lower court, and its action

thereon is not reviewable by this court. *Chirac* v. *Reinicker*, 11 Wheat. 280, 302; *Stevens's Admr.* v. *Nichols*, 157 U. S. 370, 371; *Howe* v. *Haterius*, 66 Fed. (2d) 835, 837. And in the case of *Union Pacific Ry. Co.* v. *United States*, 116 U. S. 402, this court refused certiorari to the Court of Claims to send up the original petition, when an amended petition was filed and the case heard upon it.

For the above reasons it is respectfully submitted that the lower court did not err in permitting the amended petition to be filed.

Petitioner's Second Question.

> "2. Whether Section 19 of the Curtis Act changed the purposes for which, and the persons to whom moneys due under trusts and statutes relating to the Seminoles should be paid."

The sole question before the court under this contention is whether or not Section 19 of the Curtis Act (Act of June 28, 1898, c. 517, 30 Stat. 495, 502) was repealed by the Seminole Agreement, ratified by Congress on July 1, 1898, c. 542, 30 Stat. 567. If Section 19 were not so repealed, then it remained in force and effect, and should have been followed by the Secretary of the Interior. Thus instead of "an important question of federal law which has not been hitherto presented to any court," as suggested by petitioner, the question is a simple one of statutory repeal, the rules of which have been long settled by this court.

The lower court found that $864,702.58 was disbursed by the Secretary of the Interior to the Seminole tribal treasurer during the time Section 19 was in force and

effect (Finding XII, Rec. 14), and granted recovery for the amount disbursed in violation of said provision, which prohibited such payments.

The petitioner contends that this section does not apply to the trust fund income, or to moneys not paid *per capita*. The income from the trust funds was practically all of the moneys the Seminoles had during this period, and if Section 19 did not apply to these moneys it could have no application at all. That said Section 19 applied to all Seminole moneys turned over to the tribal officers before the passage of the Curtis Act (which consisted entirely of trust fund income), is evident from the history of this legislation, which is reviewed by the lower court in its opinion (Rec. 23-25).

The Curtis Act, a comprehensive measure applying to the Five Civilized Tribes, of which the Seminole Nation is a member, had for its purpose the transformation of these tribal estates into individual allotments of land, and the equal division of the tribal funds to the members of the tribe.

Concerning conditions prevailing within the tribal governments before the Curtis Act, during which time the tribal income was disbursed by tribal officers, the court states (Rec. 24, 25):

> "Long before the passage of the Curtis Act, the utter inefficiency of the Indian tribal governments had been demonstrated and was universally recognized. It was also a matter of common knowledge throughout the Indian country that they were notoriously and incurably corrupt, and that every branch of the service was infested with favoritism,

graft, and crookedness of every kind. The Dawes Commission, in one of its early reports to Congress (1894), in speaking of these tribal governments and the prevailing conditions existing under them, said:

'Corruption of the grossest kind, openly and unblushingly practiced, has found its way into every branch of the service of the tribal governments. All branches of the governments are reeking with it, and so common has it become that no attempt at concealment is thought necessary. The governments have fallen into the hands of a few able and energetic Indian citizens, nearly all mixed blood and adopted whites, who have so administered their affairs and have enacted such laws that they are enabled to appropriate to their own exclusive use almost the entire property of the Territory of any kind that can be rendered profitable and available.

* * * * * * *

'The large payments of moneys to the Indians of these tribes within the last few years have been attended by many and apparently well-authenticated complaints of fraud, and those making such payments, with others associated with them in the business, have, by unfair means and improper use of the advantages thus afforded them, acquired large fortunes, and in many instances private persons entitled to payments have received but little benefit therefrom. And worse still is the fact that the places of payments were thronged with evil characters of every possible caste, by whom the people were swindled, defrauded, robbed, and grossly debauched and demoralized. And in case of further payments of money to them the Government should make such disbursements to the people directly, through one of its own officers.

* * * * * * *

'Justice has been utterly perverted in the hands of those who have thus laid hold of the forms of its administration in this Territory and who have in-

flicted irreparable wrongs and outrages upon a helpless people for their own gain.'

"The Curtis Act and succeeding acts of Congress had for their purpose the creation of correct membership rolls of the Five Civilized Tribes, the allotment of their tribal lands in severalty, the sale of the surplus remaining lands after allotments had been made, the equalization of allotments, the *per capita* distribution of the remaining tribal funds, the final winding up of tribal affairs and the ultimate dissolution of the tribal governments. As a part of this comprehensive general program it was provided by Section 19 of the Curtis Act:

'That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and *per capita* payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation.'

"The undoubted purpose of this provision was to forever put an end to the intolerable conditions brought about by permitting the tribal governments to receive and disburse tribal moneys due them from the United States. It was to prevent unscrupulous tribal officers and corrupt designing persons associated with them from diverting to their own use and profit tribal funds, the common property of the tribe, and to insure that all members of the tribe would receive an equal share in the distribution of such funds. No more wholesome or humane provision was ever written into an Indian statute, and the Seminole Indians were entitled to its protection in the distribution of all tribal income due them from the United States. This protection,

however, was not afforded them, and a continuation of the 'irreparable wrongs and outrages upon a helpless people' was made possible by payment thereafter of large sums of their tribal funds to the tribal treasurer."

The petitioner further contends that Section 19 was repealed by the Seminole Agreement, and relies upon the decision of Assistant Comptroller Mitchell, dated August 23, 1898, which is printed as an appendix to petitioner's brief.

The opinion of the lower court clearly points out that no provision of any Seminole treaty provides that Seminole funds be paid to the tribal treasurer, but that this method of payment was purely statutory, and that Section 19 repealed these statutory provisions before the Seminole Agreement was ratified by Congress. The court states (Rec. 25, 26):

"The defendant says that Section 19 of the Curtis Act was not applicable to the Seminole Nation for the reason that the agreement negotiated November 16, 1897, between the United States and the Seminole Nation approved and ratified on July 1, 1898 (30 Stat. 567), 'superseded and repealed any and all provisions of the Curtis Act inconsistent therewith' and that the said agreement 'did not in anywise affect the provisions of the then existing treaties between the Seminole Nation and the United States, except in so far as such provisions might be inconsistent therewith.' This contention assumes necessarily, we think, that the right of the Seminole Nation to have moneys due it from the United States paid into the Seminole tribal treasury was secured to the tribe by then existing treaty provisions. This is not the case. No such provision is found in any

> treaty between the United States and the Seminole Nation. The right of the Secretary of the Interior to pay Seminole tribal funds into the tribal treasury, as well as the right of the tribal authorities to receive and disburse such funds was purely statutory, created by the Acts of April 15, 1874, and March 2, 1889, heretofore referred to. These acts were repealed by Section 19 of the Curtis Act and were nonexistent when the Seminole Agreement was ratified on July 1, 1898. There is nothing in the agreement inconsistent with the provisions of Section 19 of the Curtis Act, and the contention that the effect of the agreement was to repeal or supersede the provisions of this section is without merit."

During the period of this transformation, Mr. Justice Van Devanter occupied the position of Assistant Attorney-General for the Interior Department. He perforce came into contact with the members of the Dawes Commission, with the representatives of the various tribes, and with everyone interested in drafting and discussing the laws which would prevent the then existing abuses in the Indian Territory. He knew the history of the abuses and the purpose and intent of both executives and legislators to correct them.

The question now before us was presented to Assistant Attorney-General Van Devanter for an opinion. With all of this light before him he held that there was no inconsistency between Section 19 and the Seminole Agreement. The lower court, in its opinion, comments as follows (Rec. 26):

> "Immediately following the passage of the Curtis Act, Hon. Willis Van Devanter, then assistant attorney-general, now an associate justice of the Supreme Court, advised the Secretary of the Interior

in a written opinion that Section 19 of the Curtis Act applied to the Seminole Nation. The assistant attorney-general, after reviewing various sections of the Curtis Act, and the Act of July 1, 1898, said:

'I have therefore to advise that Section 19 of the Act of June 28, 1898, applies to the Seminole Nation of Indians. Moreover, it results from what has been hereinbefore said that whether that act applies or not, the manner of disbursement under the Seminole Act must be the same.'

While this opinion was not controlling as to the action of the Secretary of the Interior, and was shortly thereafter withdrawn by the assistant attorney-general for that reason, it was a correct decision of the legal question presented—a decision by an outstanding authority on the interpretation of Indian treaties and laws.

The Secretary of the Interior was therefore without legal authority to pay Seminole tribal funds into the Seminole tribal treasury. More than that he was plainly prohibited by the law from doing so. The payments being clearly illegal, the plaintiff is entitled to recover the amount shown by Finding XII, which is the sum of $864,702.58."

Had the Secretary of the Interior followed Mr. Van Devanter's opinion this question would not now be before us. However, the tribal officials and their counsel—the very officials at whom Section 19 was aimed—opposed this opinion, and had the question transferred to the comptroller. These officials had opposed the Curtis Act from the beginning. In its report of October 3, 1898, the Dawes Commission states:

"The knowledge of the preparation of this bill aroused great opposition of those in the Territory opposed to any change in the exclusive use of tribal

> property by the few controlling the government of the Territory. Accordingly large delegations were sent to Washington, at great expense to their national treasuries, for the purpose of preventing such legislation and procuring, if possible, the repeal of the law taking away so much of their political power, which was to take effect January 1, 1898."

The Van Devanter opinion was withdrawn, but never repudiated, and the Secretary, following the comptroller's decision, continued to pay the tribal income to the tribal officials in violation of Section 19. Thus the very purpose of this legislation was wholly disregarded.

The decision of Comptroller Tracewell, dated October 19, 1906, relied upon by petitioner (Pet. 24-25) to show consistency in the administrative construction of Section 19, was overruled by Attorney-General Bonaparte in 26 Ops. Attys. Gen. 340. Comptroller Tracewell, guided by the Bonaparte opinion, on May 29, 1908, reversed his decision of October 19, 1906, and advised the Secretary as follows:

> "On a reconsideration of my former decision, guided and influenced by the opinion of the attorney-general, *supra*, I now hold that expenditures from the tribal funds and annuities accruing to members of the Seminole tribe of Indians are to be disbursed under your authority and direction, such disbursements to be made under the requirements and limitations of law by which they are authorized."*

The petitioner is plainly mistaken in its contention that what it terms the "fourth trust" is involved in this question (Pet. 22). This is not supported by the rec-

*This decision was in the record below, exhibit, pages 1243-1245.

ord. The record shows that only moneys which petitioner paid to the tribal officers under the Act of April 15, 1874, and under the Act of March 2, 1889, are involved (Rec. 24). Although provided for in the Seminole Agreement, yet the "Seminole School Fund" was not created until March 6, 1906, and no part of the income of this fund was paid to the Seminole treasurer.

Thus it is evident that the decision of the lower court rests upon well-settled principles of statutory construction, and the rule applied was that there must be an inconsistency between the earlier and later acts in order that the later act repeal the former one. *Washington* v. *Miller*, 235 U. S. 422, 428. The court held that there was no inconsistency between Section 19 of the Curtis Act and the Seminole Agreement. Petitioner has not pointed out any inconsistency in these laws, and it is respectfully submitted that the lower court did not err in its conclusion on this question.

Petitioner's Third Question.

> "3. Whether a trustee who makes, at the request of his beneficiaries, payments to their agent, of which they do not deny receiving the benefit, is liable to pay these sums to the beneficiaries a second time."

This contention of petitioner assumes, without proof in the record or otherwise:

1. That the illegal payments were made at the request of respondent;

2. That the Seminole Nation received the benefit of them;

3. That after Congress has prohibited payments of tribal moneys to the tribal officials they are nevertheless agents of the tribe to receive them.

The cases cited by petitioner (Pet. 26, 27) have no application to the situation before us, for there is nothing in the record to show the consent of respondent to the illegal payments made by petitioner. The respondent was not free to act for itself, but was bound by the Acts of Congress governing the administration of its affairs.

It is well settled that a trustee makes payments at his peril, and that a mistaken interpretation of the law is no excuse for illegal payments. Bogert, Trusts and Trustees, page 2363. The principle is stated in *Burnell v. United States*, 44 C. Cls. 535, 548, as follows:

> "Hence, the general rule that a trustee is bound, at his peril, to see to the proper application of the trust fund applies to the government as well as to an individual trustee. (*Borcherlin's Case*, 35 C. Cls. R., 312, which was affirmed by the Supreme Court, 185 U. S. R. 223.) It must, therefore, be apparent that if the treasury department in the case at bar made payment out of a fund which it held in trust, through a mistake of law, to the party in law not entitled to receive the same, it transcended its authority and is responsible therefor to the rightful owner of the funds."

Congress is the trustee or guardian of the Seminole Nation, and has plenary power over the administration of its tribal funds. The Secretary of the Interior has only such powers over these funds as Congress has expressly delegated to him. When Congress, within its

plenary power, prohibits the Secretary from disbursing these funds in a certain manner, the Secretary is bound by the directions of Congress (*supra,* p. 8).

The petitioner suggests that the lower court erred in not applying the general law it cites in two instances: (a) payments in violation of Section 19 of the Curtis Act, and (b) payments of Treaty of 1866 moneys illegally made to the Seminole tribal treasurer. In both of these instances Congress expressly prohibited such payments.

Concerning the claim under Section 19 the lower court states (Rec. 26):

> "The Secretary of the Interior was, therefore, without legal authority to pay Seminole tribal funds into the Seminole tribal treasury. More than that he was plainly prohibited by the law from doing so."

Long before the passage of the Curtis Act the tribal officials ceased to be representative of the tribe, but instead were furthering their own selfish interests at the expense of the tribe (Rec. 24-25). When Congress, in Section 19, prohibited such payments to these officers they ceased to be agents of the tribe in this respect, and the illegal action of the Secretary in violating the plain mandate of Congress could not be held to defeat the purposes intended to be accomplished by the passage of this law.

The claim for $57,500.00 of the income from the $50,000.00 fund established by the Treaty of 1866 for school purposes, arose out of the misapplication by petitioner of the Act of April 15, 1874, to these funds.

The Act of 1874 applied only to funds arising out of Article VIII of the Treaty of 1856. The lower court, in its opinion (Rec. 22), states as follows:

> "* * * Neither the Act of 1874, nor any subsequent Act of Congress conferred authority on the Secretary of the Interior to disburse moneys due the plaintiff tribe under the Treaty of 1866 in any manner other than that provided in the treaty.
>
> "The treaty provided that the interest on the permanent school fund of $50,000.00 be 'paid annually and appropriated to the support of schools.' Congress never authorized disbursements of this fund to be otherwise made. * * *"

Therefore, this provision of the Treaty of 1866 was never performed by petitioner. Furthermore, Section 2097 of the Revised Statutes (quoted, *supra*, p. 11) prohibited disbursements in any other manner.

A complete answer to petitioner's contention is found in *The Creek Nation* v. *United States*, 78 C. Cls. 474, 491, from which decision no appeal was taken. The court says:

> "To hold that the Secretary of the Interior had the legal right to expend such funds, in the face of positive prohibition against their expenditure without specific appropriation would be equivalent to holding that the Secretary of the Interior, not Congress, had full administrative control and power over the property of the plaintiff tribe."

It is respectfully suggested that the question is not one of payment a second time, as contended by petitioner, but that respondent has not been properly paid the first time. It is respectfully submitted that the lower court did not err as claimed by petitioner.

MISCELLANEOUS CONTENTIONS OF PETITIONER.

The petitioner contends that the lower court erred in other respects, and we will answer these questions below.

Offsets Claimed by Petitioner.

The petitioner contends that the lower court erred "in failing to make findings of fact," and in holding that "in the absence of a formal counterclaim, the government was not entitled" to certain credits (Spec. of Error 5, 6, 7, 8 and 12; Pet. 13-15, 30).

That the lower court's decision is based upon more substantial reasons than those stated by petitioner, is evident from its opinion. The court denied this contention for the reasons that (1) the special jurisdictional act under which this suit was brought does not permit such offsets, and (2) that it was not established that plaintiff received the benefit of the payments. The lower court states as follows (Rec. 19):

> "The defendant says that even if the funds in question were not disbursed in strict accordance with the terms of the treaty, they were expended for the benefit of the plaintiff tribe, and that no damage resulted to the tribe from the 'diversion' of the funds, even if unauthorized. It is urged that if the United States be technically liable, the tribe having received the benefit of the expenditures, there arises in favor of the United States an equitable counterclaim for the same amount, which the court under Section 3 of the Jurisdic-

tional Act is authorized to pass upon. This contention was urged under like circumstances in *The Creek Nation* v. *United States, supra*, and was rejected by the court. Section 3 of the Jurisdictional Act authorizes the court to 'hear, examine, consider, and adjudicate any claims which the United States may have against said Indian nation.' 'Claims' as used in the section, of course, can mean only legal claims which the United States asserts by way of counterclaim. The United States has asserted no counterclaim, hence there is no claim against the plaintiff tribe which the court is authorized to 'hear, examine, consider, and adjudicate.' Even if the plaintiff received the benefit of the payments, and that fact is not established, they were payments made outside of the provisions of the treaty and as such were gratuities which the court under the jurisdictional act is without authority to offset against the plaintiff's claim."

The petitioner has gone outside of the record to set up certain of these items claimed. When this whole question was before the lower court these matters were fought out fairly. In order to properly answer petitioner's contentions as to these items, respondent would have to resort to the evidence in the court below. We do not feel justified in doing so in view of the decisions of this court that it will not go behind or review the findings of fact of the Court of Claims. *Sac and Fox Indians* v. *United States,* 220 U. S. 481, 488; *The Sisseton and Wahpeton Indians,* 208 U. S. 561, 566; *Jacob Reed's Sons* v. *United States,* 273 U. S. 200, 202; *Luckenback S. Co.* v. *United States,* 272 U. S. 533, 539, 540.

Seminole School Fund.

The petitioner contends that the lower court erred:

> "4. In holding that Congress had not authorized the government to make expenditures from the principal of the $500,000.00 trust fund which was set apart by the Seminole Agreement of 1897 (Opinion, Item 9), the lower court erroneously decided an important question of federal law which has not been hitherto presented to any court, but which should be settled by this court" (Pet. 27).

The question presented resolves itself into a simple one: whether or not Congress modified by subsequent legislation the terms of the Seminole Agreement so as to permit payments from the principal of the permanent school fund during the fiscal years 1920 to 1930, the period covered by the claim.

The Seminole Agreement of 1897, ratified by Act of July 1, 1898, c. 542, 30 Stat. 567, 568, provided as follows:

> "Five hundred thousand dollars ($500,000.00) of the funds belonging to the Seminoles, now held by the United States, shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five per cent interest, or invested so as to produce such amount of interest, which shall be, after extinguishment of tribal government, applied by the Secretary of the Interior to the support of Mekasuky and Emahaka Academies and the district schools of the Seminole people: and there shall be selected and excepted from allotment three hundred and twenty acres of land for each of said academies and eighty acres each for eight district schools in the Seminole country."

Commenting upon this provision the lower court states as follows:

> "The fund under the provisions of the agreement was to be a 'permanent school fund' for the education of children of members of the Seminole tribe, the Secretary of the Interior being authorized to apply only the interest thereon for that purpose. He could not under the terms of the agreement expend any part of the principal fund for education or for any other purpose" (Op., Rec. 27).

Petitioner contends (Pet. 27, 28) that the Act of May 25, 1918, c. 86, 40 Stat. 561, 580, modified the terms of the Seminole Agreement, and authorized such payments. We admit that this act authorized a *per capita* payment out of the Seminole school fund, but this authorization applied to the fiscal year 1919 *only*. The Act of May 25, 1918, appropriated moneys for the fiscal year *1919* only, and this authorization ended on June 30, 1919. Respondent's claim did not begin until the fiscal year 1920, and continued until the fiscal year 1930. Therefore, subsequent legislation must be relied upon to determine whether or not Congress authorized such payments from the principal of the Seminole school fund. Petitioner has pointed out no such authority.

The Act of June 30, 1919, c. 4, 41 Stat. 3, 23, appropriating for the fiscal year 1920 (the year in which the claim begins), provides in part as follows:

> "That during the fiscal year ending June 30, 1920, no moneys shall be expended from tribal funds

belonging to the Five Civilized Tribes, without specific appropriation by Congress."

Similar provisions were contained in each of the annual appropriation acts beginning with the Act of August 24, 1912, c. 388, 37 Stat. 518, 531, until the Act of May 24, 1922, c. 199, 42 Stat. 552, 575, by the terms of which this provision became a permanent provision of law (Rec. 27, 28). Therefore, specific appropriations by Congress were required under the law before the principal of the Seminole school fund could be lawfully reduced.

Petitioner further relies upon the general authorizations in the annual appropriation acts giving the Secretary the right to continue tribal schools of the Five Civilized Tribes from tribal funds. These provisions in so far as they affect Seminole funds generally authorized payments for Seminole schools from general funds of the tribe, and payment of the *interest* on the "Seminole School Fund" for the continuance of schools; however, there is no specific authority in such provisions for depletions of the "Seminole School Fund" *principal*. The intent of these provisions would seem to be directly to the contrary, for to reduce the principal of the permanent school fund would cut off the income therefrom, and would accordingly reduce the means by which these schools might be continued.

The "Seminole School Fund" was a special fund set aside for a special purpose—that of providing sufficient income permanently for the education of the Seminoles. Unlike other general Seminole funds, this

school fund was not available for general disbursements. Therefore, the general authorizations in the yearly appropriation acts could have no possible application to the "Seminole School Fund," and did not authorize depletions of the principal of this fund. Congress would have to specifically act to do so.

We believe that the lower court completely answers petitioner's contention as follows:

> "That Congress had the power to change the terms of the agreement and authorize these payments is well established, but we find no act of Congress that either in express terms or by necessary implication authorized any of them."

Petitioner's Obligations under Treaty of 1856.

The petitioner claims that the lower court erred in its holding that the government was liable for a deficiency in payments under Article VIII of the Treaty of 1856 for the reasons that (1) the government had spent them for the relief of loyal refugee Indians instead of the purposes originally contemplated, and (2) that the Treaty of 1866 released any liabilities that might have existed for those years (Spec. of Error 10, 11; Pet. 14).

The record does not support the statement of petitioner that this money was spent for refugee Indians, and no finding to that effect was made by the court below (Findings III, IV; Rec. 10, 11). The court sufficiently answers these contentions as follows (Rec. 18):

> "* * * The general language, 'The stipulations of this treaty are to be a full settlement of all claims of said Seminole Nation for damages and losses of every kind growing out of the late Rebel-

lion,' has no application and cannot be held to include this item of the Seminole claim for the reason that substantially the whole amount claimed was due and unpaid before the outbreak of the war and consequently is not one for 'damages and losses growing out of the War of the Rebellion.' The simple facts are that the United States covenanted with the Seminole tribe in Article VIII of the Treaty of 1856, as a part of the consideration for the treaty, to provide annually for them for a period of ten years fixed sums for the support of schools, for agricultural assistance, and for the support of smiths and smith shops among them. In the absence of subsequent specific enactment by Congress to the contrary, the United States was obligated to disburse the funds stipulated in the manner and for the purposes designated in the treaty. The United States failed to discharge this treaty obligation in full, having disbursed only a part of the amount for the purposes named in the treaty. The plaintiff tribe is entitled to recover the undisbursed balance of $61,563.42."

Agency Buildings.

The petitioner contends that the lower court erred in holding that Article VI of the Treaty of 1866 should be construed to require the government to spend the entire $10,000.00 for agency buildings, and that the court erred in fixing the damages on this basis (Pet. 15, Pars. 13, 14).

The obligation of the government under Article VI of the Treaty of 1866 was part of the consideration for a cession by the Seminole Nation to the United States of 2,169,080 acres of land (Article III, Treaty of March

21, 1866, 14 Stat. 755). This money was due and owing to the Seminoles; they gave their land for it. The question now before us is whether the government conformed to its treaty promise to them. For this reason the cases cited by petitioner on the matter of damages (Pet. 31) have no application to the question now before us.

The lower court permitted recovery in the amount of $9,068.24, the difference between the $10,000.00 obligation, and $931.76 expended for agency buildings and repairs (Rec. 23, 24), after the court found that $9,030.15 of the $10,000.00 appropriated by Congress had been misspent. The court found the facts as follows:

> "It does not appear for what purpose the $9,030.15 expended out of this appropriation was used, but it was not used for the purpose of erecting agency buildings" (Finding XI; Rec. 14).

The facts disclosed that Congress appropriated $10,000.00 in the Act of July 28, 1866, c. 296, 14 Stat. 310, 319, to fulfill this treaty obligation, but this sum was not used and was returned to surplus. Congress again appropriated $10,000.00 to replace the amount returned to surplus, in the Act of May 18, 1872, c. 172, 17 Stat. 122, 132. Congress having twice fixed the amount of this obligation at $10,000.00 (Finding XI; Rec. 13, 14), the amount of this obligation became definite in this amount. It is respectfully submitted that the small payment of $931.76, paid for agency buildings and repairs out of another general appropriation, and not out of the $10,000.00 appropriation, would not be a substantial com-

pliance with this treaty obligation. As this money was misspent after it was so appropriated by Congress, recovery for this item could also be sustained for a violation of Section 2097, Rev. Stat., quoted *supra,* page 11.

CONCLUSION.

The petitioner has not questioned the two basic principles of law upon which the lower court decided this whole case. For the reasons heretofore mentioned it is respectfully submitted that the petition should be denied.

Respectfully submitted,

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FILE COPY

No. 172

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

THE UNITED STATES

v.

THE SEMINOLE NATION

BRIEF OF RESPONDENT.

PAUL M. NIEBELL,
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Attorneys for Respondent.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 172

THE UNITED STATES

v.

THE SEMINOLE NATION

BRIEF OF RESPONDENT.

May It Please the Court:

This is a review granted by this court to the United States of a decision of the Court of Claims holding that the respondent was entitled to recover the amount of $1,317,087.27. The opinion of the Court of Claims was rendered December 2, 1935, and is not as yet reported. The petition for writ of certiorari was granted on October 12, 1936.

STATEMENT.

This suit was instituted under the special jurisdictional act of May 20, 1924, c. 162, 43 Stat. 133, 134, authorizing the Court of Claims to adjudicate: